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October 9, 2020

Via Electronic Mail

Evan Belser
Acting Director, Air Enforcement Division
U.S. Environmental Protection Agency
MC 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: *United States v. Orion Engineered Carbons, LLC*, Consent Decree (Case No. 6:17-cv-01660) – Notice of Intent to Assert Claim of Force Majeure – Fifth Supplemental Update

Dear Mr. Belser:

Orion Engineered Carbons, LLC (Orion) provides this letter in response to your letter dated April 24, 2020 (the “EPA Letter”) requesting monthly updates regarding Orion’s March 23, 2020 notice of intent to assert force majeure. The EPA Letter requested an initial response within four weeks and supplemental updates every four weeks thereafter. Orion provided its initial response on May 21, 2020 (the “Initial Response”). This letter is Orion’s fifth supplemental update.

Orion continues to undertake extraordinary efforts to mitigate the continuously growing, material impacts of COVID-19. [REDACTED]

We ask that you treat the redacted portions in the public version of this submittal as confidential business information (CBI) pursuant to 40 C.F.R. Part 2.

Ivanhoe

1. Clarify the meaning of the term, “pollution control projects required by the CD at [] Ivanhoe.”

No change since Initial Response.

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2. Do the PM Early Warning Systems, baghouses and incineration devices necessary to achieve MACT compliance remain operational?

No change since Initial Response.

3.

[REDACTED]

4. What activities are the employees performing? Are they making carbon black?

[REDACTED]

5. Provide any updates received from Defendant's contractors related to COVID-19.

No change since prior response.

6. Provide any updates, orders, or directives from state and local officials related to COVID-19.

The following is a brief summary of orders issued after the fourth supplemental update that affect Orion:

Louisiana

September 11: Governor issues Proclamation 117 moving Louisiana into Phase 3 of reopening, continuing the statewide mask mandate, and limiting crowd sizes to no more than 50% of the capacity set by the State Fire Marshall.¹ Governor also issues Proclamation 118 extending emergency provisions imposing travel restrictions on public employees, suspending in-person shareholder meetings, and imposing a variety of restrictions on the operations of government entities, among other measures.² Louisiana Department of

¹ State of Louisiana, Proclamation 117 JBE 2020 (Sept. 11, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/117-JBE-2020-COVID-19-Public-Health-Emergency-Phase-3-of-Resilient-LA.pdf>.

² State of Louisiana, Proclamation 118 JBE 2020 (Sept. 11, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/118-JBE-2020-Renewal-of-SOE-for-COVID-19-Extension-of.pdf>.

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Environmental Quality (LDEQ) issues Eleventh Amended Declaration of Emergency and Administrative Order. LDEQ declares that “an emergency exists” and that “measures are necessary to prevent serious threats to life or safety.” The order extends certain regulatory deadlines, among other measures.³

- September 17: Governor issues Proclamation 123 modifying the permissible hours of operation for bars to 8 a.m. to 11 p.m.⁴
- September 18: LDEQ issues Twelfth Amended Declaration of Emergency and Administrative Order. LDEQ acknowledges that Louisiana has entered Stage 3 of reopening but largely leaves emergency measures from preceding order in place.⁵
- September 25: LDEQ issues Thirteenth Amended Declaration of Emergency and Administrative Order, which largely leaves in place emergency measures from the preceding order. LDEQ continues to declare that “an emergency exists” and that “measures are necessary to prevent serious threats to life or safety.”⁶

Although some restrictions have been lifted, the Governor has made clear that immediate reinstatement may occur at any time: “[S]hould there be an increase in the number of confirmed COVID-19 cases or should the number of COVID-19 related hospitalizations threaten the ability of the health care system to properly respond, it may be necessary to go back to the full restrictions in the [original] Stay at Home order.”⁷

7. Provide a detailed construction schedule, reflective of the anticipated schedule as of March 1, 2020, (broken out by month), that specifies the work being performed, the

³ Louisiana Department of Environmental Quality, Eleventh Amended Declaration of Emergency and Administrative Order (Sept. 11, 2020), <https://www.deq.louisiana.gov/assets/docs/Covid-19/11thAmendedDAEOCOVID19.pdf>.

⁴ State of Louisiana, Proclamation 123 JBE 2020 (Sept. 17, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/123-JBE-2020-COVID-19-Public-Health-Emergency-Phase3-of-Resilient-LA.pdf>.

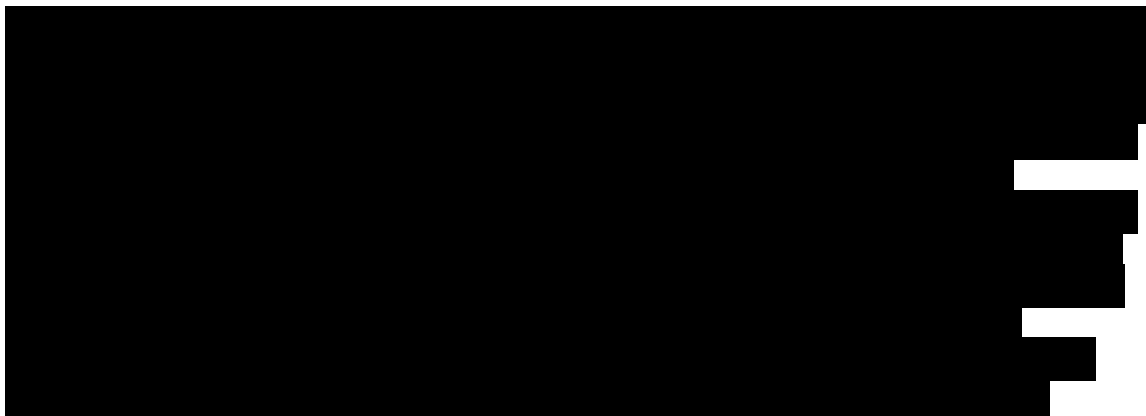
⁵ Louisiana Department of Environmental Quality, Twelfth Amended Declaration of Emergency and Administrative Order (Sept. 18, 2020), <https://www.deq.louisiana.gov/assets/docs/Covid-19/DEAO12thAMENDEDCOVID19.pdf>.

⁶ Louisiana Department of Environmental Quality, Thirteenth Amended Declaration of Emergency and Administrative Order (Sept. 25, 2020), https://www.deq.louisiana.gov/assets/docs/emergency_declarations/DEAO-13th-AMENDED-COVID-19-SIGNED.pdf.

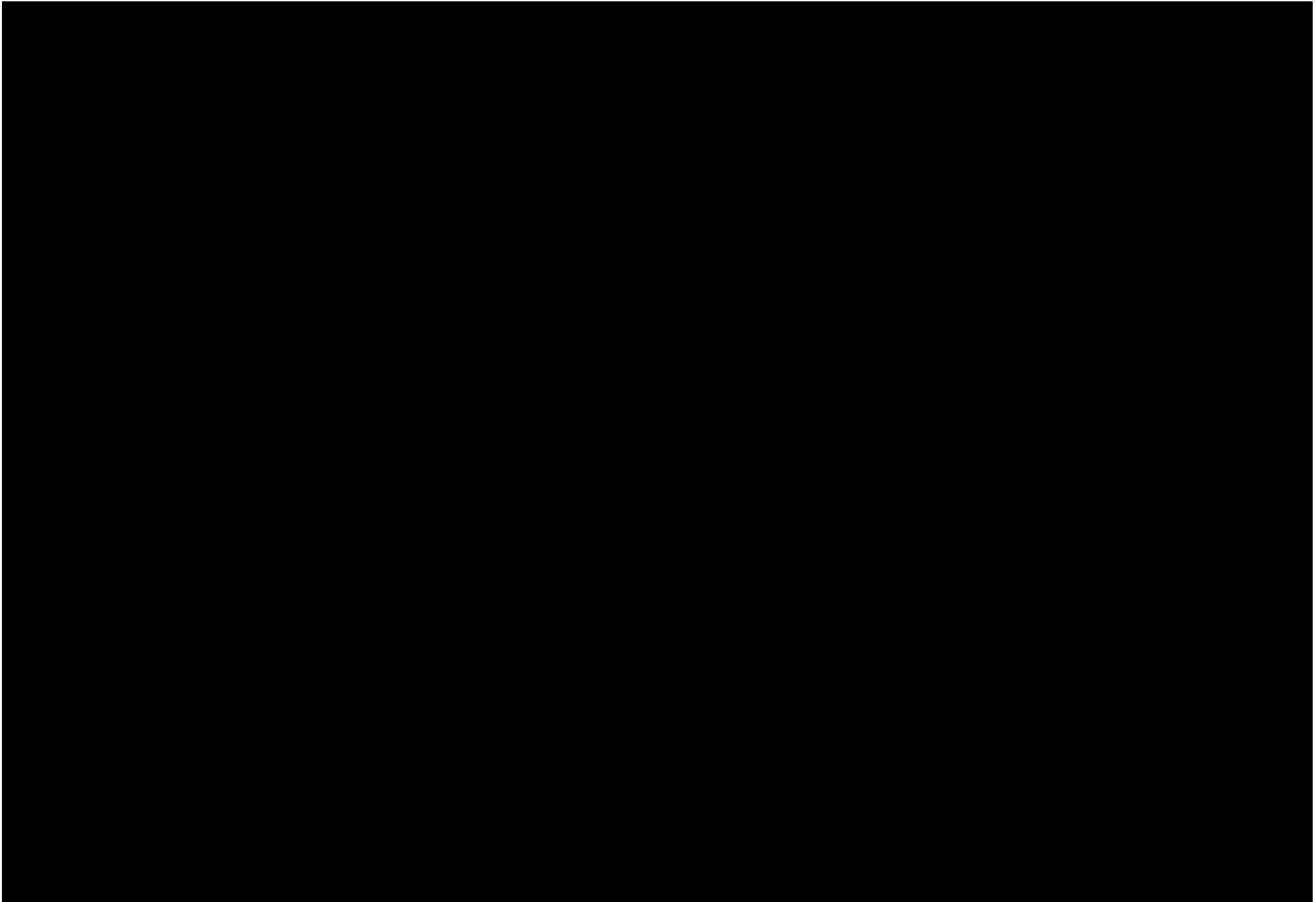
⁷ State of Louisiana, Proclamation 117 JBE 2020 (Sept. 11, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/117-JBE-2020-COVID-19-Public-Health-Emergency-Phase-3-of-Resilient-LA.pdf>.

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number of contractors expected to be on site (noting the name of the company), the anticipated date of arrival of major parts, and any other relevant information.



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Conclusion

Orion remains committed to working with EPA to adhere to federal and state orders and to protect the health and safety of its employees, contractors, and communities. Orion will continue to provide EPA updates every four weeks. Thus, Orion will provide its next update on or about November 6, 2020.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Painter'.

Corning Painter
Chief Executive Officer
Orion Engineered Carbons, GmbH

cc: Kellie Ortega, U.S. Environmental Protection Agency
David Friedland, Beveridge & Diamond, P.C.
Jason Dunn, U.S. Department of Justice
Katherine Abend, U.S. Department of Justice
Celena Cage, Louisiana Department of Environmental Quality
Brandon Williams, Louisiana Department of Environmental Quality